

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

DON BLANKENSHIP,

Plaintiff,

v.

Civil Action No. 2:19-cv-00236

FOX NEWS NETWORK, LLC et al.,

Defendants.

ORDER

Pending is the motion for a temporary stay filed by the defendant Fox News Network, LLC ("Fox News") on July 15, 2021 (ECF No. 729).

In a July 7, 2021 hearing, the Magistrate Judge assigned to this matter considered several discovery-related motions, including Fox News's motion for reconsideration of the Magistrate Judge's previous order granting the plaintiff's motion to compel production from certain custodians. See ECF No. 956; ECF No. 967; ECF No. 969. On July 8, 2021, the Magistrate Judge entered an order that, among other things, denied Fox News's motion for reconsideration. See ECF No. 968. In the order, the Magistrate Judge ordered Fox News to immediately produce materials that Fox News did not appear to dispute should be produced. See id. at 6 & n.1. With respect

to those materials that Fox News continued to dispute – dubbed “intra-executive communications” – the Magistrate Judge ordered Fox News to produce them within “fourteen (14) days from the date of [the Magistrate Judge’s] Order, otherwise, in accordance with [Fed. R. Civ. P.] 72(a) . . . , [Fox News] may contest the ruling by filing its objection to same within 14 days with [the] District Judge.” Id. at 6-7 (footnote omitted) (emphasis added).¹

On July 15, 2021, Fox News timely filed objections to the Magistrate Judge’s order. See ECF No. 974. Fox News states that it produced the undisputed materials the Magistrate Judge ordered produced immediately. See ECF No. 975 at 3-4. It objects to the Magistrate Judge’s order to the extent the order requires it to produce the intra-executive communications still in dispute. See ECF No. 974; see also ECF No. 975 at 3.

In the current motion, Fox News requests that the court enter an order staying the Magistrate Judge’s July 8, 2021 order to the extent it requires Fox News to produce the disputed intra-executive communications until its objections have been

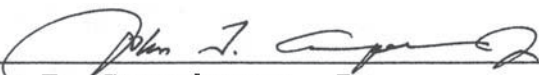
¹ Notably, during the motions hearing, the Magistrate Judge explained to the plaintiff’s counsel that, “if [he] ha[d] to issue an order, it’s going to be appealed, and it’s going to take weeks or months and you’re not getting anything during that period of time.” ECF No. 969 at 52-53.

resolved. See ECF No. 975. Fox News notes, however, that such an order is "not strictly necessary" because the "plain language" of the Magistrate Judge's order contemplates that, if it timely files objections to the order, it is not required to produce the intra-executive communications until the objections are resolved. Id at 2, 5.

The court agrees with Fox News that the Magistrate Judge's order, by its own terms, does not require Fox News to produce the intra-executive communications if Fox News timely files objections to the order. Accordingly, it is ORDERED that Fox News's motion for a temporary stay (ECF No. 975) be, and hereby it is, denied as moot.² Fox News is under no obligation to produce the disputed intra-executive communications while its objections remain pending.

The Clerk is directed to transmit copies of this order to all counsel of record and to any unrepresented parties.

ENTER: July 20, 2021



John T. Copenhaver, Jr.
Senior United States District Judge

² The court declines to address the other reasons Fox News offers in support of the requested stay.